

**CV-05-422-MWL**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTONDARRYL J. JONES, JEREMY  
ALBRIGHT, ANTONIO BRYANT,  
SHANNON MORELAND,

Plaintiffs,

vs.

GEIGER CORRECTIONS CENTER  
and LEON LONG,

Defendants.

NO. CV-05-386-MWL

ORDER ADOPTING REPORT AND  
RECOMMENDATION, DENYING CLASS  
CERTIFICATION, DENYING MOTION FOR  
APPOINTMENT OF COUNSEL, AND  
DIRECTING COMPLAINT BE SEVERED

BEFORE THE COURT is a Response to the magistrate judge's Report and Recommendation to deny class certification and to sever the complaint. Only Plaintiff Shannon Moreland signed the Response in which he requests a District Court Judge preside over the remainder of this action. Plaintiff Moreland asserts the other plaintiffs "concur," and asks the court to grant their "Motion for Appointment of Counsel" (Ct. Rec. 2).

Plaintiff Moreland contends the appointment of counsel is necessary due to the complexities of a class action and the procedural problems of a multiple-plaintiff action. In the initial Motion, Plaintiffs asserted they had no legal training and class action complaints are too complex to initiate, litigate and resolve.

ORDER ADOPTING REPORT AND RECOMMENDATION . . . -- 1

1 This court has discretion to designate counsel pursuant to 28  
2 U.S.C. §1915(e)(1) only under exceptional circumstances. *Terrell v.*  
3 *Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). Determining whether  
4 exceptional circumstances exist requires evaluating "the likelihood of  
5 success on the merits and plaintiff's ability to articulate his claims  
6 *pro se* in light of the complexity of the legal issues involved." *Id.*  
7 (citation omitted).

8 Plaintiff Shannon Moreland contends the issues in this action,  
9 which the Plaintiffs request proceed as a class action lawsuit, are  
10 complex; Plaintiff Moreland complains legal assistance is unavailable  
11 and law library time is limited. In light of the decision to sever  
12 the complaint, and to require Plaintiffs to proceed separately if they  
13 choose, the record does not reflect exceptional circumstances which  
14 warrant the appointment of counsel at this time.

15 For the reasons set forth by the magistrate judge, **IT IS ORDERED**  
16 the Report and Recommendation (Ct. Rec. 10) is **ADOPTED in its**  
17 **entirety. IT IS FURTHER ORDERED** Plaintiffs' Motion for Appointment of  
18 Counsel and for Class Action Certification (Ct. Rec. 2) is **DENIED**.  
19 This case will proceed before the magistrate judge, subject to  
20 objections as provided in the Local Rules for the Eastern District of  
21 Washington.

22 For the sake of administrative ease, the court will order that  
23 each Plaintiff's claim be severed from the claims of the others.  
24 Plaintiff Darryl J. Jones will proceed in this action, while the other  
25 three Plaintiffs will proceed in three separate civil actions to be  
26 opened by the District Court Executive. Each Plaintiff will proceed  
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1 with his own action and will be solely responsible for his own action  
2 and his own filing fee.

3 The District Court Executive will be directed to assign each new  
4 action to the same judicial officer assigned to the instant action.  
5 The District Court Executive shall make appropriate adjustment in the  
6 assignment of civil cases to compensate for this reassignment.

7 According, **IT IS ORDERED:**

- 8 1. The claims of Plaintiffs Jeremy Albright, Antonio Bryant,  
9 and Shannon Moreland are severed from the claims of  
10 Plaintiff Darryl J. Jones;
- 11 2. Plaintiff Darryl J. Jones shall proceed as the sole  
12 Plaintiff in case No. CV-05-386-MWL; and
- 13 3. The District Court Executive is directed to:
  - 14 a. Open three separate civil actions for Plaintiffs Jeremy  
15 Albright, Antonio Bryant, and Shannon Moreland;
  - 16 b. Assign each action to the judicial officer to whom the  
17 instant case is assigned and make appropriate  
18 adjustment in the assignment of civil cases to  
19 compensate for such assignment;
  - 20 c. Place a copy of this Order, the complaint and the  
21 appropriate application to proceed *in forma pauperis* by  
22 a prisoner, in each of the three files opened for  
23 Plaintiffs Jeremy Albright, Antonio Bryant, and Shannon  
24 Moreland;
  - 25 d. Strike from the caption of each Plaintiff's complaint  
26 all Plaintiffs' names except the name of the individual  
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1 Plaintiff proceeding in the action; and

2 e. Send each Plaintiff an endorsed copy of his complaint  
3 bearing the amended caption and the case number  
4 assigned to his own individual action.

5 **IT IS SO ORDERED.** The District Court Executive shall enter this  
6 Order and forward copies to Plaintiffs Darryl J. Jones, Jeremy  
7 Albright, Antonio Bryant, and Shannon Moreland.

8 **DATED** this 28th day of December 2005.

9  
10 s/ Fred Van Sickle  
11 FRED VAN SICKLE  
12 UNITED STATES DISTRICT JUDGE  
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